

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 30, 2023

CASE: 2022-00196N

Citation: Simcoe Condominium Corporation No. 104 v. Leary, 2023 ONCAT 52

Order under section 1.44 of the *Condominium Act, 1998*.

Member: Nicole Aylwin, Member

The Applicant,

Simcoe Condominium Corporation No. 104

Represented by Tania Faria, Agent

The Respondent,

Brandy Leary

Represented by Suma George, Agent

The Intervenors,

Theodore Augustyniak and Antonia Spiteri

Self-Represented

Hearing: Written Online Hearing – November 9, 2022 to March 15, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Respondent, Brandy Leary is the owner of a unit in the Applicant, Simcoe Condominium Corporation No. 104 (“SCC 104”). Ms. Leary currently leases her unit to the Intervenors, Theodore Augustyniak and Antonia Spiteri. Mr. Augustyniak drives a truck for work that contains equipment required for his job and has signs and advertising on the vehicle. Since the beginning of their lease agreement, Mr. Augustyniak has been parking this truck in the exterior parking space of the unit that he and his wife are renting from the Respondent. According to SCC 104, as per Rule 4 (“the Rule”) of the condominium’s rules, no licensed commercial vehicle may be parked in any spot in the condominium, nor can any vehicle parked on condominium property have advertisements or signs affixed to it. A picture of the truck shows that it does have several advertisements/signs inscribed on it, and that the uncovered cab of the truck contains what appears to be a rack holding tools and other materials and several pieces of equipment. SCC 104 submits that Mr. Augustyniak’s truck is a commercial vehicle with advertising on it and they have asked the Tribunal to order that the Intervenors remove the truck from its current parking spot and refrain from parking any commercial vehicle

in any condominium parking spot.

- [2] Both the Respondent and Intervenors take the position that the Rule is unreasonable and/or is being enforced inconsistently and that the Tribunal should order that it be repealed. They further submit, that should the Rule not be repealed, an exception to the Rule should be granted to the Intervenors for the duration of their tenancy.
- [3] For the reasons set out below, I find that parts of the Rule are not in accordance with s. 58(1) of the *Condominium Act, 1998* (the “Act”) and are unenforceable. Consequently, under s. 1.44(1) 2 of the Act, I order that SCC 104 refrain from enforcing this Rule against the Intervenors.

B. ISSUES & ANALYSIS

Issue No. 1: Is SCC 104’s Rule 4 unreasonable?

- [4] While both parties offered many submissions on other issues in this case – issues such as whether the Intervenors are in contravention of the Rule, and, if so, should an exception to the Rule be made for them. Before considering the parties’ submissions on whether the Rule has been breached or whether an exception should be made, it is appropriate in this case to first examine whether the Rule itself is enforceable; particularly, whether it satisfies the requirements of s. 58 of the Act in order to be a valid rule of the condominium.
- [5] The rule at issue in this case is SCC 104’s Rule 4, which states, in part:
- Only vehicles, such as a car, van, SUV or personal use truck may be parked on the common elements of exclusive use areas.
- No licensed commercial vehicle or recreation vehicle such as camping vans, utility trailers, boats and trailers, snowmobiles, machinery or equipment of any kind shall be parked on the common elements or exclusive use areas. The Corporation’s Board of Directors may approve exceptions for one night.
- ...
- No vehicle parked on the common elements or exclusive use areas shall have a sign, advertisement or notice inscribed, painted affixed or placed on any part of the inside or outside of the vehicle.
- [6] The Respondent and the Intervenors take the position first and foremost that the Rule is unreasonable and should be repealed.
- [7] Under s. 58 (1) of the Act, a rule must be made for one of the two purposes allowed under the Act.

The board may make, amend or repeal rules under this section respecting the

use of the units, the common elements or the assets, if any, of the corporation to,

(a) promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or

(b) prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation.

- [8] Section 58(2) of the Act requires a rule to be reasonable. It reads, “The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.”.
- [9] Therefore, I must first determine whether the Rule falls within the parameters of s. 58(1) and then, if it does, I will consider whether it is reasonable.
- [10] I asked both parties to provide submissions specifically on the Rule within the context of s. 58 of the Act.
- [11] SCC 104 contends that the Rule is a longstanding rule of the corporation that was enacted because when the community was developed, it was envisioned as an “Adult Lifestyle Community.” SCC 104 is part of a condominium community, which consists of several separate condominiums located in and around a golf course. Thus, it is meant to have the “look and feel” of a “park like setting”. It notes that the Rule was implemented to ensure consistency in the look of the community, which has several ‘phases,’ and to keep the community aesthetically pleasing to those who live in it.
- [12] The Respondent and Intervenors argue that the Rule is arbitrary, out of step with today’s work realities, and does not in any way promote the safety or security of the residents. They note that it is not uncommon for people to drive work vehicles, some of which may be affixed with signs and advertisements. They argue that the Rule effectively works to unfairly police the type of people who may live in the community since it prevents people such as Mr. Augustyniak, whose truck, despite containing equipment for his work also acts as his personal vehicle, from living in the community. They further submit the SCC 104 community does not have any buildings, other than individual free-standing units, and thus there are no issues of overhead clearance (which may be an issue in an underground garage) or spill over to other properties that would be a cause for concern, as all vehicles are parked in each unit owner’s own personal driveway. Finally, they submit that SCC 104 has only vaguely defined an ‘aesthetic’ for the community without demonstrating what this means and how the parking of Mr. Augustyniak’s truck or others like it, unreasonably interferes with the use and enjoyment of the common elements and amenities of the corporation.

- [13] No safety, security or welfare risk, as per s. 58(1)(a) of the Act has been identified as a reason for the parts of Rule 4 at issue.
- [14] Section 58(1)(b) of the Act, allows a rule to be made if it prevents unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation.
- [15] In considering whether an interference is unreasonable (and thus would require a rule to prevent such interference) some of the factors that may be considered are the severity of the interference, the character of the neighbourhood, the impact of the interference, and whether or not the community should be expected to tolerate the interference under the circumstances.
- [16] In this case, SCC 104 has clearly stated the purpose of the Rule is to promote 'consistency' in the appearance of the community, and to safeguard a particular type of aesthetic, i.e., a "park like setting." This is an argument that speaks to the character of the neighbourhood and is a valid consideration. However, this is only one factor to be considered and does not outweigh all other factors. In this case, I cannot conclude based on the evidence that the parking of a licensed commercial vehicle or a vehicle with advertising interferes in any way – let alone an unreasonable way – with any person's ability to actually use or enjoy any of SCC 104's common elements or amenities (such as the walking trails referenced by the parties) or interferes with a person's ability to access, use, or enjoy their own unit. While a commercial vehicle may, in some circumstances impact the aesthetic envisioned by the condominium corporation, in this case, the impact, or interference, is trivial in nature. When considered with the other factors, it is an interference that the community should be expected to tolerate.
- [17] I acknowledge that the Rule may be a longstanding one and that the 'look' of the community may be important for some owners, but the length of time a rule is in place and its importance to some owners are not factors that fall within s. 58(1) of the Act.
- [18] While there might be instances where the facts show that a commercial vehicle or advertising and signs on a vehicle are prohibited because they do cause more than a trivial interference and do unreasonably interfere with the use and enjoyment of units and common elements, perhaps due to safety, size, maintenance issues, or other factors specific to the condominium community, in this case SCC 104's evidence and submissions do not demonstrate this. Therefore, I cannot conclude that the parts of the Rule at issue were enacted to prevent an unreasonable interference with the use and enjoyment of the common elements or individual units as per s. 58(1)(b) of the Act. Nor can I conclude that

the Rule was made to prevent a safety, security or welfare risk as per s. 58(1)(a) of the Act. Accordingly, I find that the parts of the Rule that prohibit the parking of licensed commercial vehicles and vehicles that have advertising or signs affixed to them, on the common elements or in exclusive use areas do not meet the purposes for which rules can be made under s. 58(1)(a) and (b) of the Act. Under s. 1.44(1) 2 of the Act, I order that SCC 104 refrain from enforcing the parts of the Rule at issue against the Respondent and Intervenors.

[19] Finally, I note that SCC 104 may choose to amend the Rule. There may well be rules that set out prohibitions regarding advertising on vehicles and the types of vehicles that can be parked on condominium property which are appropriate under s. 58(1) of the Act. However, should SCC 104 choose to do so, I encourage them to be cognizant of the purposes for which rules can be made.

[20] No costs have been requested and none are ordered.

C. ORDER

[21] The Tribunal Orders that:

1. SCC 104 shall refrain from enforcing the following parts of Rule 4 against the Respondent and Intervenor:
 - a. The prohibition on the parking of licensed commercial vehicles on the common elements or exclusive use areas, and;
 - b. The prohibition on the parking of vehicles that have signs, advertisements or notices inscribed, painted affixed or placed on any part of the inside or outside of the vehicle on the common elements or exclusive use areas.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: March 30, 2023